

1 NICHOLAS W. BROWN
Attorney General of Washington
2 TERA M. HEINTZ, SBN #241414
Deputy Solicitor General
3 Solicitor General's Office
1125 Washington Street SE, PO Box 40100
4 Olympia, WA 98504-0100
(360) 753-6200
5 Tera.Heintz@atg.wa.gov
Attorneys for Plaintiff State of Washington
6

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **AT SAN FRANCISCO**

9 AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
10 et al.,

11 Plaintiffs,

12 v.

13 UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT, et al.,
14

15 Defendants.

NO. 3:25-cv-01780-WHA

DECLARATION OF
KRISTA FINLAY

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DECLARATION OF KRISTA FINLAY
NO. 3:25-cv-01780-WHA

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 I, Krista Finlay, declare as follows:

2 1. I am over the age of 18, competent to testify as to the matters herein, and make
3 this declaration based on my personal knowledge.

4 2. I am a resident of Eastsound, Washington. Until I was terminated on February 27,
5 2025, I was employed with the National Oceanic and Atmospheric Administration (NOAA) as
6 a Natural Resource Management Specialist in the Sustainable Fisheries Division,
7 National Marine Fisheries Service.

8 3. I have two bachelor's degrees, in environmental science and geography. I also
9 have a Masters in Education with two teaching credentials. Prior to my scientific career, I taught
10 public high school for fourteen years. I then went back to school and obtained a Master of
11 Environmental Science and Management, specializing in both coastal and marine resource
12 management and science communications.

13 4. I worked for NOAA for almost three years (one year as a NOAA Pathways intern,
14 one year as a Knauss Sea Grant Fellow, almost one year in my terminated position). I was
15 appointed to my Natural Resource Management Specialist position on approximately March 25,
16 2024. My duty station was the NOAA Western Regional Center on Sand Point Way in Seattle.

17 5. In my work with NOAA, I partnered extensively with the Washington State
18 Department of Fish and Wildlife (WDFW) and Washington's Treaty Tribes. About 60% of my
19 time was spent working on ESA Section 7 consultations and writing biological opinions to
20 permit the release of chinook salmon from WDFW and Washington Treaty Tribes hatcheries,
21 supporting state and tribal fishing economies.

1 6. An additional 20% of my time was spent on similar work to introduce salmon
2 into the ocean as a food source to support the southern resident killer whale population. In
3 addition to playing a vital role in the health of marine ecosystems, killer whales are an important
4 resource in Washington's tourism economy.

5 7. With my termination, these salmon-related projects are on hold. The direct result
6 is that many millions of chinook salmon will not be released from WDFW and Tribal Nation
7 hatcheries in 2025. This failure will have a devastating impact to important sectors of
8 Washington's economy, and will also threaten the southern resident killer whale, a species
9 protected by the Endangered Species Act.

10 8. What is more, the needless failure to properly manage chinook salmon
11 populations in the current year will have a deleterious effect on salmon populations going
12 forward. Specifically, there will be insufficient adults returning to spawn for 2–3 years, with the
13 result that the overall chinook salmon population will suffer for many more years before
14 returning to levels seen prior to my termination.

15 9. Although I previously worked for NOAA, from the date of my most recent
16 appointment, NOAA classified me as a probationary employee. My probationary period was
17 one year, or until approximately March 25, 2025.

18 10. At staff a meeting in early February 2025, I and other employees in the
19 West Coast Region offices of the National Marine Fisheries Service were told by West Coast
20 region leadership that a list was provided to leadership of probationary employees. Leadership
21 reported that they sent the list back to the United States Office of Personnel Management, telling
22
23

1 | them that each of us was considered mission critical for NOAA, and that the division would
 2 | advocate that all of us be retained at our positions.

3 | 11. In my performance review completed on October 31, 2024, I had received the
 4 | highest possible commendations my supervisor could make. Based on this, as well as the
 5 | statements made at the February staff meeting, and the vital importance of the projects assigned
 6 | to me, I fully expected to be retained at my position at the close of my probationary period.

7 | 12. On February 14, 2025, Ryan Wulff, Assistant Regional Administrator of the
 8 | NOAA West Coast Regional Office, Sustainable Fisheries Division notified me and other
 9 | NOAA scientists and staff at West Coast Regional offices that our names appeared on a list of
 10 | probationary employees compiled at the request of agency leadership in Washington, DC. A true
 11 | and correct copy of Ryan Wulff's February 14, 2025, email is attached as **Exhibit A** to this
 12 | declaration.

13 | 13. At 12:43 pm PST on February 27, 2025, I received by email a notice from a
 14 | general, mass-email NOAA address. The notice stated that NOAA was terminating my
 15 | employment, effective at 2:00 pm PST that same day, asserting that "the Agency finds that you
 16 | are not fit for continued employment because your ability, knowledge and/or skills do not fit the
 17 | Agency's current needs." My termination thus became effective one hour and seventeen minutes
 18 | after I received the notice. A true and correct copy of the email termination is attached as
 19 | **Exhibit B** to this declaration.

20 | 14. The termination email did not identify any issue with my performance or conduct,
 21 | nor did it identify any conditions arising before my appointment to justify my termination.
 22 |
 23 |

15. When I informed my branch chief Jeromy Jording of the email termination, he asked me to forward the email to him and to Ryan Wulff. With the forwarded email, I included information from my most recent performance review, reasons why my work is crucial to the Agency's needs and the public interest, and why I believe the termination was made in error. Jording stated then that he believed I was an essential employee in my division, and that he relayed that message and my specific work that will be placed on hold to Ryan Wulff. He told me that local NOAA officials would do everything in their power to advocate for me.

16. The February 27, 2025, termination notice was the first I had learned of my termination.

17. My work was vitally important to carrying out NOAA Fisheries’ stated mission of ensuring productive and sustainable fisheries and the recovery and conservation of protected resources. For this reason, I take particular offense to the statement in the termination notice that my “ability, knowledge and/or skills do not fit the Agency’s current needs.”

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 6th day of March 2025, at Eastsound, Washington.

Krista Finlay
KRISTA FINLAY

Exhibit A

Gmail - Fwd: List of probationary employees

<https://mail.google.com/mail/u/1/?ik=c6bb1e749e&view=pt&search=a...>



Krista S. Finlay [REDACTED]

Fwd: List of probationary employees

Krista Finlay - NOAA Federal <krista.finlay@noaa.gov>
To: "Krista S. Finlay" [REDACTED]

Tue, Feb 18, 2025 at 9:19 AM

----- Forwarded message -----

From: **Ryan Wulff** <ryan.wulff@noaa.gov>
Date: Fri, Feb 14, 2025 at 4:04 PM
Subject: List of probationary employees
To: <krista.finlay@noaa.gov>

Krista,

I am reaching out to let you know you are on the list of current NOAA employees that are still in their probationary period after hiring. I have been told to advise you of this and to let you know it may be useful to download your SF-50 and documents from eOPF.

To be abundantly clear, this is simply a list at this time. I don't have any information on what will happen with this list at this time. If you have questions, please feel free to reach out to me directly -- given the extenuating circumstances, do not feel any guilt in contacting me over the weekend either.

I will have my cell phone with me starting at 4.30pm. [REDACTED]. You can gchat me as well anytime and we can set up a time to talk.

Regards,
Ryan

--

Krista Finlay

Natural Resource Management Specialist
Anadromous Hatcheries North, West Coast Region
NOAA Fisheries | U.S. Department of Commerce
Phone: (206-940-7134)
<https://www.fisheries.noaa.gov/region/west-coast>



NOAA
FISHERIES

Exhibit B

----- Forwarded message -----

From: <trusted.staff.sender@noaa.gov>
 Date: Thu, Feb 27, 2025 at 12:43 PM
 Subject: Notification of Termination During Trial Period
 To: <krista.finlay@noaa.gov>

February 27, 2025

MEMORANDUM FOR FINLAY, SARA K, Natural Resource Management Specialist, NMFS
 FROM: VADM Nancy Hann
 Deputy Under Secretary for Operations
 SUBJECT: Notification of Termination During Trial Period
 REFERENCES: 5 U.S.C. § 3321(a)
 DAO 202-315

This is to provide notification that I am terminating you from the position of and federal service consistent with the above references.

On March 25, 2024, the agency appointed you to the position of Natural Resource Management Specialist. As documented on your appointment Standard Form 50 (SF-50), your appointment is subject to the completion of a probationary/trial period. The agency also informed you of this requirement in the job opportunity announcement for the position.

Guidance from the Office of Personnel Management ("OPM") states, "An appointment is not final until the probationary period is over," and the probationary period is part of "the hiring process for employees." (1) "A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service" (2) "Until the probationary period has been completed," a probationer has "the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual." (3)

OPM has advised that "[p]ro probationary periods are an essential tool for agencies to assess employee performance and manage staffing levels." (4) In light of that guidance, the Agency finds that you are not fit for continued employment because your ability, knowledge and/or skills do not fit the Agency's current needs.

For these reasons, I am terminating you from the position of Natural Resource Management Specialist with the agency and the federal civil service effective February 27, 2025 at 5 p.m. EST.

If you believe that your termination is the result of discrimination, you have the right to file a complaint pursuant to 29 C.F.R. Part 1614. Any allegation of discrimination based on race, color, religion, sex, national origin, physical or mental disability, and/or age, must be brought to the attention of an Agency Equal Employment Opportunity (EEO) Counselor within forty-five (45) days of the effective date of this action. <https://www.noaa.gov/civil-rights/eec-counseling-complaints>

If you elect to seek corrective action by the Office of Special Counsel's (OSC) Complaints Examining Unit, your appeal will be limited to a determination as to whether the Agency took one or more covered personnel actions against you in retaliation for making one or more protected whistleblowing disclosures, which constitutes a prohibited personnel practice in accordance with 5 U.S.C. § 2302(b). If OSC dismisses your claim, you may file an individual right of action appeal to the MSPB, but the MSPB will only adjudicate whether you proved that your protected disclosure was a contributing factor in the effected action. For more information, you may visit the OSC's website at: <https://osc.gov/pages/file-complaint.aspx>

If you have any questions regarding this notice, please contact Octavia Saine, Acting Director of the NOAA Office of Human Capital Services, at octavia.saine@noaa.gov.

VADM Nancy Hann
 Deputy Under Secretary for Operations

(1) OPM, [Practical Tips for Supervisors of Probationers](#).
 (2) See [U.S. Merit Systems Protection Board Report to the President and Congress, The Probationary Period: A Critical Assessment Opportunity](#) (August 2005)
 (3) Id.
 (4) OPM, [Guidance on Probationary Periods, Administrative Leave and Details](#)